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RUEHKL/ASEAN COLLECTIVE

UNCLAS KUALA LUMPUR 001838

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STATE FOR EB/TPP/MTA - EKOCH
STATE PASS USTR FOR B. HIRSCH, B. WEISEL AND J. JENSEN
COMMERCE FOR TCC/4110 - BVAUGHAN
USDA/ITP/FAS FOR BERTSCH

E.O. 12958: N/A

TAGS: ETRD ECON MY

SUBJECT: TRADE AGREEMENT COMPLIANCE AND MONITORING

REF: STATE 152063

¶1. Embassy Kuala Lumpur's Economic, FCS, and FAS Sections jointly monitor and respond to trade barrier complaints consistent with each office's areas of expertise. All three offices interact closely with the American-Malaysian Chamber of Commerce (AmCham), a very pro-active organization that also tracks unfair trading practices in Malaysia that affect U.S. commercial interests. On many trade compliance issues involving U.S. firms, Embassy officials and AmCham representatives coordinate our approaches to Malaysian government officials to strengthen their impact. Compliance is an important consideration in our ongoing free trade agreement negotiations with Malaysia.

¶2. Embassy point of contact for trade compliance issues is Deputy Economic Counselor John Finkbeiner, FinkbeinerJM@state.gov, tel: (60-3)2168-5092, fax: (60-3)2168-4993.

¶3. The following cases provide examples of some of post's recent trade compliance efforts:

A) UPS Operations Center: In June 2006, UPS filed a request with the Ministry of Transportation to transfer its Kuala Lumpur operations center from Kuala Lumpur International Airport (KLIA) to Subang Airport. GOM policy promotes the use of KLIA, but other express courier services have been permitted to move to closer-in Subang. Post has been advocating with MOT on behalf of UPS, citing our bilateral air agreement that calls for fair and equal treatment of all competitors.

B) Marketing of Child Nutrition Products: Malaysia's Ministry of Health is studying the imposition of tighter restrictions on the marketing of children's nutrition products (e.g., infant formula). The new rules could potentially exceed WHO agreed standards. Post has urged the Minister of Health to consult with industry in the development of any new marketing standards.

C) Distributive Retail Trade Sector: Malaysia's Ministry of Domestic Trade and Consumer Affairs (MDTCA) has proposed new guidelines that would negatively impact the ability of foreign investors to participate in Malaysia's retail trade sector. One aspect of the guidelines would require that hypermarkets reserve 30% of their shelf space for products manufactured by Bumiputera (ethnic Malay) companies, a provision that appears to be incompatible with Malaysia's WTO TRIMs commitments. Post has been pursuing this issue with the MDTCA, up to the minister level, and the issue is being discussed with ongoing FTA negotiations.

D) Auto Policy: Automobile imports to Malaysia are controlled by the requirement that every such import receive an approved permit, which effectively imposes a quota on auto imports. The government also

recently announced that it would determine, without the input of importers, the value of vehicle imports for customs and tax purposes. Both policies appear to be inconsistent with Malaysia's WTO obligations. Malaysia's automobile policy, including these provisions, is being discussed as part of our ongoing FTA negotiations.

E) WTO SPS Agreement Compliance: FAS has been somewhat successful in persuading Malaysia to follow the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which advocates the use of established, science-based international guidelines in dealing with SPS issues affecting trade. In accordance with World Organization for Animal Health (OIE) guidelines, Malaysia reopened the market to US boneless beef under the age of 30 months in February 2006, after closing the market in December 2003.

Malaysia also reopened the market to US poultry in August 2004, following the outbreak of highly pathogenic avian influenza (HPAI) in Texas in early 2004. As a result of extensive discussions and information exchange, Malaysia's Department of Veterinary Services has also agreed to regionalize import restrictions from any future HPAI outbreaks, and has agreed not to impose trade restrictions following outbreaks of low pathogenic notifiable AI or from detection of AI in wild birds. All of these measures are in accord with OIE guidelines, which Malaysia previously did not follow. In addition, Malaysia agreed to modify import protocols for swine genetics to recognize clinical freedom from certain diseases of concern, rather than require testing or disease-free declarations. As a result, the US is making our first sales of swine breeding stock since 2001.

F) Restrictive Import Licensing for meat and poultry: Malaysia requires import licensing for meat and poultry imports, in addition to veterinary certification. Its administration of import licenses often acts as a de facto quota system to restrict imports. (For poultry meat and pork, Malaysia reserved the right to implement a TRQ in the Uruguay Round but has never formally done so.) Import licenses are distributed based on domestic supply conditions. Both importers and food processors apply directly for import licenses. Importers are often refused import licenses or they are granted for less than the quantity requested. Food processors sometimes have more success in obtaining import licenses, especially if the end product is for export. Pork imports are further restricted to offal and processed pork products, rather than meat cuts. However, DVS has recently allowed imports of meat cuts in response to domestic shortages.

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